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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Modification of Section 90.267(b)
and Other Provisions of the FCC's
Regulations Affecting the
Ownership of Specialized Mobile
Radio Systems within 40 Miles
of Each Other

RM-8030

To: The Commission

**STATEMENT OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL
IN OPPOSITION TO PETITION FOR RULE MAKING**

The Utilities Telecommunications Council (UTC), pursuant to Section 1.405 of the Federal Communications Commission (FCC)'s rules, submits its "Opposition To Petition For Rule Making" in response to the rule making petition filed by A&B Electronics, Inc. (A&B). A&B requests the FCC to modify its rules regarding ownership of Specialized Mobile Radio (SMR) systems within 40 miles of each other.

Introduction

UTC is the national representative on communications matters for the nation's electric, gas and water utilities. Approximately 2,000 utilities are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of customers to small rural electric

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cooperatives and water districts serving only a few thousand customers. All utilities depend on reliable communications facilities to carry out their public service obligations, and most operate private land mobile facilities. UTC is therefore interested in any proceedings that would affect the efficient licensing and use of private land mobile radio spectrum.

Discussion

A&B requests the FCC to modify Section 90.627 of the FCC's rules, the 40-mile rule, which currently provides that licensees cannot be authorized for a trunked system within 40 miles of an existing trunked system unless the licensee's existing trunked system is loaded to at least 70 mobile and control stations per channel. According to A&B, the 40-mile rule limits the ability to offer wide area SMR service, inhibits the consolidation of SMR systems and reduces the opportunities for the most economically and spectrally efficient operations. A&B also alleges that the rule constrains the provision of interconnected service, particularly in rural areas.

To remedy these perceived inefficiencies, A&B requests that the FCC take two steps. First, A&B recommends the FCC create a Section 90.627(b)(4) to permit assignments of SMR stations even if both stations are within 40 miles and are

not loaded to levels of 70 units per channel, as long as both stations are no longer in their original license term. A&B claims these changes would foster consolidation of SMR systems and increase the incentives for licensees to implement digital technology. In addition, A&B argues the rule change would eliminate the need for management contracts for systems licensed for five years or more. This would be beneficial, according to A&B, because use of management contracts is cumbersome and does not promote the more efficient use of SMR frequencies discussed above.

UTC does not object to A&B's first modification of the 40-mile rule as described above, as long as it is limited to systems that have been licensed for five years or more. However, UTC does not support A&B's stated goal of discouraging participation by speculators "until after the expiration of the initial license term."^{1/} UTC does not support speculation at any point in time, and does not find the "delay" of speculation a compelling justification for a proposed rule. However, with the exception of that goal, UTC does not dissent from A&B's proposal.

A&B's second proposal is to create a Section 90.627(b)(5) to eliminate completely the 40-mile restriction for licensees which have obtained system

^{1/} RM-8030, at pp.11-12.

licenses. A system license would be available to any entity which has 20 or more constructed channels within a metropolitan service area (MSA) or a rural service area (RSA). The stations of the system license would be either beyond their first five year license term or able to demonstrate aggregate loading of 70 units per channel across the system. A&B proposes that once an entity is designated a system licensee, it should be permitted to obtain additional channels by assignment or by application to the FCC at any location in its MSA or RSA. Two restrictions apply to A&B's proposal. First, the system licensee would only be permitted to obtain five more channels than it has constructed within 40 miles. Second, the licensee could not request additional channels through intercategory sharing until all SMR channels were licensed throughout the area. Additionally, A&B proposes that Section 90.627(b)(2) of the rules be modified so that a licensee can be authorized for an additional trunked system within 40 miles of an existing system if all the licensee's channels within 40 miles are loaded on an aggregate basis to 70 mobile and control stations. A&B maintains that its system licensing proposals would promote the use of wide area systems and encourage provision of an acceptable grade of interconnect service.

UTC opposes A&B's system licensing proposal and the consequent privileges gained by system licensees. UTC questions whether wide area systems and interconnect service are consistent with the intent of establishing an SMR service and, more particularly, whether they merit the erosion of the FCC's policies against speculative use of the radio spectrum. A&B specifically acknowledges that this second part of its proposal would allow entities to hoard channels, albeit only five channels at a time.^{2/} UTC urges the FCC not to permit a regulatory framework that implicitly approves spectrum hoarding, regardless of whether there are limits on the amount of spectrum that can be amassed at one time. Further, UTC notes that A&B's proposal would favor larger SMR systems and would prohibit smaller systems, and might preclude new entrants into the SMR marketplace, from obtaining spectrum. A&B attempts to justify allowing only larger entities to hoard channels by arguing there is less danger in a system licensee hoarding spectrum than there would be for a "speculator" hoarding channels.^{3/} In any event, it does not necessarily follow that this system licensing concept will fulfill A&B's avowed goal of promoting more rapid use of SMR channels that are not fully employed today.

^{2/} RM-8030, at p.13.

^{3/} RM-8030, at p. 13.

UTC does not agree with rules which would permit this sort of speculation. Further, UTC does not agree with A&B's premise that A&B's proposals are preferable to the complete elimination of the 40-mile rule, which A&B alleges would allow speculators to accumulate and build facilities without providing service to the public. A&B's system licensing proposal and the total elimination of the 40 mile rule are equally unpalatable. Acquiescence by the FCC in any type of spectrum hoarding scheme would compromise its statutory mandate to ensure efficient use of the radio spectrum and would set a negative precedent for other types of licensing situations.

However, if the FCC were to make any rule changes along the lines proposed by A&B, SMR licensees must be prohibited from requesting channels through intercategory sharing. The intercategory sharing rules were established with the assumption that the existing 40-mile rule would be retained, and that SMR licensees would be permitted to expand their systems only when their existing facilities are loaded to at least 70 units per channel. Without a prohibition on obtaining intercategory channels, A&B's proposals would permit SMR system licensees to hoard non-SMR channels needed by Power Radio Service eligibles and other Industrial/Land Transportation category eligibles. UTC submits that this was not the intent behind granting

the ability to obtain channels through intercategory sharing, and at no time should intercategory access be an option if A&B's proposals are adopted.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully requests the Federal Communications Commission to take action consistent with the views expressed herein.

UTILITIES TELECOMMUNICATIONS
COUNCIL

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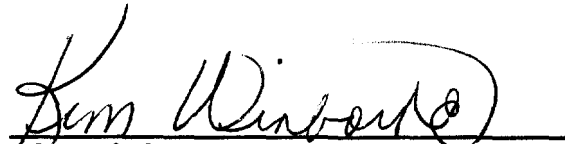
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Dated: August 12, 1992

CERTIFICATE OF SERVICE

I, Kim Winborne, hereby certify that I have caused to be sent, by first class mail, postage prepaid, this 12th day of August, 1992, a copy of the foregoing "Statement of the Utilities Telecommunications Council in Opposition to Petition For Rule Making," to the following:

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